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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JORGE ARMANDO JUAREZ PEREZ,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE  
COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

G048401

(Super. Ct. No. 12CF2471)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Daniel J. Didier, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI § 6 of the Cal. Const.)

Petition granted.

Monica V. Ramallo-Young, for Petitioner.

No appearance for Respondent.

Kamala D. Harris, Attorney General and Julie L. Garland, Assistant Attorney General, for Real Party in Interest.

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THE COURT: \*

Citing Penal Code section 1237.5<sup>1</sup> the superior court denied the request by petitioner Jorge Armando Juarez Perez for a certificate of probable cause. Petitioner contends the request states arguable issues on appeal, and therefore it was an abuse of discretion for the court to deny the request. The Attorney General has indicated it has no objection to this court granting the relief requested in the instant petition.<sup>2</sup> We agree with petitioner and grant the petition.

In August 2012, petitioner was charged in a felony complaint with one count of possession for sale of a controlled substance and one count of possession of a firearm on school grounds. Petitioner's family was concerned that petitioner's legal issues would present immigration problems for him based on his status as a permanent legal resident. They hired attorney Alex Perez to defend him on his drug case based on Perez's representations that he could handle petitioner's criminal matter and avoid petitioner's deportation to Mexico.

Shortly thereafter, Perez told petitioner that the People had offered him a plea deal and that if he accepted the deal, he would be able to defend any immigration case brought against him because the sentence he was being offered was less than one year. Perez further advised petitioner that if he did not accept the deal, the immigration

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\* Before Moore, Acting P.J., Aronson, J., and Thompson, J.

<sup>1</sup> All further references are to the Penal Code.

<sup>2</sup> In his petition for a writ of mandate, petitioner prays for peremptory relief in the first instance. The Attorney General in its informal response indicated it had no objection to granting petitioner's petition for a writ of mandate. Because "petitioner's entitlement to the relief requested is so obvious that no purpose could be served by plenary consideration of the issue," we issue a peremptory writ of mandate in the first instance. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1260.)

consequences could be much worse for him. Perez never explained to petitioner that by pleading guilty he would be deported, rendered ineligible for reentry into the United States, rendered permanently ineligible to return and precluded from naturalization. Furthermore, if he reentered illegally, he could face substantial time in federal prison.

Relying on Perez's advice, petitioner accepted the deal and pled guilty in November 2012. As a result of his guilty plea, the federal immigration court ordered him removed from the United States in January 2013.

Petitioner filed a motion to withdraw his guilty plea on the basis that he was prejudiced by his trial counsel's failure to advise him of the immigration consequences of his plea. As part of his motion to withdraw his plea, he submitted a declaration from his immigration attorney, Mercedes Castillo. In her declaration, Castillo opined that petitioner's trial counsel's representation was below the objective standards of reasonableness because if counsel had "researched the matter or made a five-minute phone call to an immigration attorney or a criminal attorney experienced in the immigration consequences of criminal convictions, he would have known that a final conviction of the charge [petitioner pled guilty to] would make [petitioner] inadmissible for reentry to the United States, permanently ineligible to return, and precluded from naturalization, and if he reentered illegally, he would face 20 years in federal prison."

In sum, Castillo concluded that Perez's representation fell below the standard of reasonableness because "(1) he [Perez] made no attempt to obtain a plea with less drastic immigration consequences, and (2) he provided [petitioner] with misinformation regarding the immigration consequences of his plea, thereby depriving [petitioner] of his right to make an informed decision regarding the plea."

In February 2013, the court summarily denied petitioner's motion to withdraw his plea. In March 2013, petitioner filed a timely notice of appeal and request for certificate of probable cause on the basis the trial court erroneously denied his motion

to withdraw his plea which was taken in violation of his right to effective assistance of counsel.

In his certificate of probable cause, petitioner advised that Perez was made aware that he was a legal permanent resident of the United States and that he did not want to be deported as a result of his legal matters. This concern was of paramount importance to petitioner because he had been living in the United States since he was a one-year-old child, his father is a United States citizen and his mother is a lawful permanent resident. His three younger brothers were born in the United States and are United States citizens. All of his aunts and his uncles and their children live in the United States. He has no close relatives or friends left in Mexico. Moreover, he has never returned to Mexico to visit since he was brought to the United States as a one year-old child. And, while he speaks Spanish, he has a minimal education and is not fully literate in the Spanish language. He currently possesses no skills which would allow him to support himself once in Mexico.

In March 2013, the Appellate Division of the Orange County Superior Court notified petitioner that his notice of appeal was received and filed, but the appeal was marked inoperative because the court denied his certificate of probable cause.

Section 1237.5 states that no appeal may be taken from a guilty plea without first filing a written statement “showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.” (§ 1237.5, subd. (a).) The standard of review when the trial court denies a request for a certificate of probable cause is abuse of discretion, and “the test . . . is whether the appeal is clearly frivolous and vexatious or whether it involves an honest difference of opinion.” (*People v. Ribero* (1971) 4 Cal.3d 55, 63, fn. 4.) When reviewing a certificate of probable cause, the court’s objective is to eliminate those appeals “having no possible legal basis” by refusing to issue a certificate of probable cause. (*People v. Warburton* (1970) 7 Cal.App.3d 815, 819.)

We conclude that based on the facts set forth within, the petition demonstrates petitioner's entitlement to the issuance of a certificate of probable cause because the appeal in this case is not "clearly frivolous and vexatious." (*People v. Ribero, supra*, 4 Cal.3d at p. 63, fn. 4.) Let a peremptory writ of mandate issue ordering the superior court to vacate its order of March 13, 2013, denying petitioner's request for a certificate of probable cause, and to enter a new and different order granting petitioner's request for a certificate of probable cause. The clerk of the superior court is directed to accept the certificate of probable cause if presented within 30 days from the date of the finality of this opinion. Further proceedings, including preparation of the record on appeal, are to be conducted according to the applicable rules of court. In the interest of justice, this opinion is final as to this court forthwith.